



[Billing Code 7709-02-P]

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Approval of Alternative Arbitration Procedure; American Arbitration Association

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation (“PBGC”) has received a request from the American Arbitration Association (“AAA”) for approval of an Alternative Arbitration Procedure under section 4221 of the Employee Retirement Income Security Act of 1974, as amended, and 29 CFR 4221.14. The purpose of this notice is to advise interested persons of the AAA application for approval and solicit their views on it.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.
- E-mail: reg.comments@pbgc.gov.
- Fax: 202-326-4224.
- Mail or Hand Delivery: Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

Comments received, including personal information provided, will be posted to www.pbgc.gov. Copies of comments and non-confidential portions of the request may be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW, Washington, DC 20005-4026 or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

FOR FURTHER INFORMATION CONTACT: Bruce Perlin (*Perlin.Bruce@PBGC.gov*), 202-326-4020, ext. 6818 or Jon Chatalian (*Chatalian.Jon@PBGC.gov*), ext. 6757, Office of the Chief Counsel, Suite 340, 1200 K Street N.W., Washington, DC 20005-4026; (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4020.)

SUPPLEMENTARY INFORMATION:

Background

The Multiemployer Pension Plan Amendments Act of 1980 (“MPPAA”) requires “any dispute” between an employer and a multiemployer pension plan concerning a withdrawal liability determination to be “resolved through arbitration.” ERISA § 4221(a)(1). Under the MPPAA, an employer has 90 days after receipt of notice of a withdrawal liability assessment to request review of that assessment. ERISA § 4219(b)(2)(A). If there remains a dispute about the assessment of withdrawal liability, the employer may “initiate” arbitration of the dispute within a 60-day period after the earlier of (i) the date the employer was notified of the plan’s response to the employer’s request for review, or (ii) 120 days after the date that the employer requested review of the withdrawal liability. ERISA § 4221(a)(1). If the employer fails to timely initiate

arbitration, the assessment becomes due and owing and the plan sponsor may bring an action in a state or federal court to collect the assessment. ERISA § 4221(b).

The MPPAA directed PBGC to promulgate fair and equitable procedures for the conduct of an arbitration under ERISA § 4221. PBGC's implementing regulations (29 CFR part 4221) were designed to provide procedures to facilitate prompt resolution of disputes by an impartial arbitrator, facilitating expeditious resolutions of disputes concerning an employer's withdrawal liability. PBGC's default arbitration procedures provide rules for the appointment and powers of the arbitrator, rules for discovery and hearings, and rules for awards, costs, filing and service (§§ 4221.4- 4221.13).

Scope of Alternative Arbitration Procedures

In lieu of the default procedures, under 29 CFR § 4221.14, an arbitration may be conducted in accordance with an alternative arbitration procedure approved by the PBGC in accordance with §4221.14(c). Certain rules applicable to the default procedures cannot be varied in any alternative procedure. 29 CFR § 4221.14(b). If an arbitration is conducted under a PBGC-approved alternative procedure, the alternative procedure governs all aspects of the arbitration, with the following exceptions provided in 4221.14(b): the time limits for initiating arbitration may not differ from the time limits provided 4221.3; the arbitrator must be selected after the initiation of arbitration; the arbitrator must give the parties an opportunity for prehearing discovery that is substantially equivalent to that required by § 4221.5(a)(2); copies of the award must be made available to the public at least to the extent mandated by §4221.8(g); and the arbitration costs must be allocated in accordance with § 4221.10.

Process for Approval of Alternative Arbitration Procedures

Under § 4221.14(c), PBGC may approve alternative arbitration procedures on its own initiative by publishing an appropriate notice in the Federal Register. Additionally, the sponsor of an arbitration procedure may request PBGC approval of its procedures by submitting an application to the PBGC. The application must include: (1) a copy of the procedures for which approval is sought; (2) a description of the history, structure and membership of the organization that sponsors the procedures; and (3) a description of the reasons why, in the sponsoring organization's opinion, the procedures satisfy the criteria for approval set forth in this section.

Criteria for Approval of Alternative Procedures

Under 4221.21(d), PBGC shall approve an application if it determines that the proposed procedures will be substantially fair to all parties involved in the arbitration of a withdrawal liability dispute and that the sponsoring organization is neutral and able to carry out its role under the procedures. PBGC may request comments on the application by publishing an appropriate notice in the Federal Register and notice of PBGC's decision on the application shall be published in the Federal Register. Unless the notice of approval specifies otherwise, approval will remain effective until revoked by the PBGC through a Federal Register notice.

AAA's Alternative Arbitration Rules – 1981 & 1986 MPPAR

In 1985, on its own initiative, PBGC approved the 1981 Multiemployer Pension Plan Arbitration Rules for Withdrawal Liability Disputes (the “1981 MPPAR”), an alternative arbitration procedure sponsored by the International Foundation of Employee Benefit Plans and administered by AAA. 50 Fed. Reg. 38046 (Sept. 19, 1985). In 1986, PBGC approved AAA's request to use an amended MPPAR (the “1986 MPPAR”) which eliminated certain procedural differences between the 1981 MPPAR and PBGC's final arbitration regulation. 51 Fed. Reg. 22585 (June 20, 1986). The administrative fee schedule for handling arbitrations in the 1986

MPPAR was applicable until 2013, when AAA adopted an updated 2013 Fee Schedule, creating a revised MPPAR, effective February 1, 2013 (“2013 MPPAR”). The new Administrative Fee Schedule provides for increases to the Initial Filing Fee, establishes two different fee arrangements—the Standard and Flexible Fee Schedules, and adds a “Final Fee” under each schedule and a “Proceed Fee” in the flexible schedule context. Other than significant changes to the Administrative Fee Schedule, the 2013 MPPAR are identical to the 1986 MPPAR that PBGC previously approved. Under 4221.14, AAA has requested PBGC’s approval of the updated 2013 Fee Schedule (the “Application”).

AAA’s Application included the necessary information under 4221.14(c): a copy of the 2013 Fee Schedule; a description of the history, structure and membership of AAA; and a discussion of the reasons why, in AAA’s opinion, the 2013 Fee Schedule satisfies the criteria for PBGC approval under §4221.14(d).

A copy of AAA’s Application can be found at:

<http://www.pbgc.gov/prac/pg/other/guidance/multiemployer-notices.html>.

Request for Comments

All interested persons are invited to submit written comments on the pending Application request. All comments will be made part of the administrative record.

Issued in Washington, DC, on this 15th day of March, 2016.

W. Thomas Reeder,
Director,
Pension Benefit Guaranty Corporation.